

Supreme Court of Kentucky

ORDER

**IN RE: APPROVAL OF AMENDED RULES OF PRACTICE AND
PROCEDURE FOR DISTRICT COURT IN THE 25th
JUDICIAL DISTRICT, CLARK AND MADISON COUNTIES**

Upon the recommendation of the District Court Judges of the 25th Judicial District, Clark and Madison counties, and being otherwise sufficiently advised,

The Amended Rules of Practice and Procedure for Clark and Madison District Courts are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered this 3rd day of March 2011.


CHIEF JUSTICE JOHN D. MINTON, JR.

**COMMONWEALTH OF KENTUCKY
25TH JUDICIAL DISTRICT**

**AMENDED
RULES OF DISTRICT COURT
PRACTICE AND PROCEDURE**

PREAMBLE

The following Rules of Practice and Procedure are adopted in order to promote and facilitate the fair and efficient administration of justice in the courts of the 25th Judicial District. There rules are designed to inform the public as to how the court system operates, to assist the practitioner in the presentation of cases, and to generally enhance the dignity of and respect for the local court system. The overriding purpose of these rules is to provide for the fair, prompt and consistent administration of justice in the local court system.

I. GENERAL PROVISIONS

101. COURTS OF THE 25TH JUDICIAL DISTRICT

(a) There are two (2) District Courts in the 25th Judicial District: Clark District Court and Madison District Court. Clark District Court holds sessions at 17 Cleveland Avenue, Clark Judicial Center, Second Floor, Winchester, Kentucky. Madison District Court holds sessions in the Madison County Hall of Justice, 351 West Main Street, Richmond, Kentucky, and Berea City Hall, First Floor, Berea, Kentucky.

(b) Sessions of Court are per Order entered and recorded in the District Court Clerk's Office.

(c) Time or Courtroom for a particular session in aforementioned order is subject to temporary or permanent change without notice should circumstances require.

(d) The Judicial District has three divisions. The divisions shall be designated one, two and three with each division assigned to one judge.

102. COURT SESSIONS

The divisions specified above contain separate sessions. All matters shall be scheduled on the dates and times designated in the Court schedule relative to each division.

II. CRIMINAL PRACTICE

201. MOTIONS

To facilitate the preparation of motion dockets and preparation by the Court, all motions must be in writing and should be filed and served not later than forty-eight (48) hours prior to the scheduled hearing, excluding Saturdays, Sundays and holidays if service is made in person. If copies to opposing counsel and the Court are served by mail, said motion must be filed not later than five (5) days prior to the day of the scheduled hearing. Copies of all motions filed shall be served or mailed to the Court. Counsel may set Motions to be heard on regular hearing docket of the respective Court or in the case of lengthy motions, scheduling same with the Court. In Jury Trials dispositive motions, discovery issues, motions to continue and foreseeable evidentiary motions shall be scheduled to be heard on date of Pretrial Conference unless another hearing date has been assigned by the Court and will not be heard on the trial date except for good cause shown or as provided by the Rules of Civil or Criminal Procedure.

202. COPIES TO COURT

Counsel shall mail, e-mail or hand-deliver a copy of each written motion to the Court when the original is filed with the Clerk's Office. This will allow the Court to review the Motion and supporting memoranda or affidavits prior to the hearing.

203. GUILTY PLEAS (Jury Trials)

When the Defendant's case has been scheduled for jury trial, all reasonable efforts should be made to prevent unnecessary delay of the trial and inconvenience to the jury. Attorneys and defendants are to use their best efforts toward settlement and should exhaust completely all efforts toward settlement no later than the Friday before the trial date.

204. PRETRIAL CONFERENCES (Jury Trials)

Pretrial Conferences will be held as a matter of course in all criminal and traffic cases in which a jury trial has been requested. If a plea arrangement cannot be reached, a date for trial will be set. At the Pretrial Conference all Motions, stipulations and proposed Jury Instructions shall be presented to the Court.

205. CONTINUANCES (Jury Trials)

Continuances will be granted only for good cause shown.

206. TRIAL DATE (Jury Trial)

Every effort shall be made by Court and counsel to promote efficiency, to maintain decorum and to avoid inconvenience to the jury panel. All counsel, defendants, and witnesses shall be present at 8:00 a.m. a.m. on the date of trial. Counsel, defendants, and witnesses for cases which are not anticipated to be heard first shall nevertheless report and remain available for trial throughout the day. Unless otherwise directed by the Court, counsel and defendants of the case selected as the first trial of the day shall be seated at the counsel table at 9:00 a.m. to announce that they are ready for trial.

207. SEARCH WARRANTS

Copies of all search warrants and supporting affidavits shall be filed in the Clerk's Office pursuant to RCr 13.10. An executed copy shall be filed by the executing officer in the Clerk's

Office within forty-eight hours of execution. If an arrest results therefrom, the above papers shall be placed in the case jacket of the Defendant. Supporting affidavits shall be sworn to before the Circuit Judge or District Judge or the Circuit Clerk in the absence of a Judge or before a person properly authorized by Order of this Court.

208. SUBPOENAS

All subpoenas to be served by the Sheriff should be delivered to the Sheriff's Office at least ten (10) days prior to the Jury Trial. Motion for continuances due to the absence of witnesses may be denied, unless it is certified that this rule was complied with or good cause shown.

III. JUVENILE DIVISION

301. PROCEEDINGS

All proceedings in Juvenile Division shall be conducted pursuant to the Unified Juvenile Code, KRS Chapter 600 to 645, as amended.

302. MOTIONS

Motions should be filed and served as set out in DPR 201, but shall be scheduled during regular sessions of the Juvenile Division.

IV. CIVIL PRACTICE

401. TIMES FOR MOTIONS

Motions shall be scheduled for the days and times indicated on the Court schedule. The Clerk's Office shall maintain a Civil Motion docket, and shall docket each motion in the order that it is filed. Counsel should contact the Clerk's Office to obtain a date for a hearing. The Court assumes that each hearing will take no longer than fifteen (15) minutes. The Court requests counsel to obtain a special day and time from the District Judge to hear motions that will last longer than 15 minutes.

402. SERVICE OF MOTIONS

Motions should be in writing, except motions made orally during trial. Service of motions shall be as outlined in DPR 201.

403. MOTIONS UNDER CR 78(2)

Motions may be made pursuant to CR 78(2), which provides for the determination of motions without oral hearings upon brief written statements of reasons in support and opposition of the motion. The movant shall state that the motion is made pursuant to CR 78(2), and shall direct the opposing attorney's attention to the fact that under this local rule the motion may be granted routinely by the Court within ten (10) days after filing unless an objection is received or a response filed. Should the party opposing the motion wish to have an oral hearing, they may so state in their response, and after contacting the Clerk's Office as outlined above, shall proceed to set the motion for a Motion Day.

404. CONTINUANCES

An attorney who will be unable to be present at the time set for a motion shall immediately contact the opposing attorney and attempt to establish a mutually agreeable time for the hearing. Continuances for motions may be granted upon agreement of parties and the notification of the clerk. Should this prove unsuccessful, the party desiring a continuance shall file a motion for continuance in writing. The Court will then consider the motion for continuance, and determine whether to reschedule the hearing or hold it for compelling reasons.

405. COPIES TO COURT

Counsel must mail, e-mail, or hand-deliver a copy of each written motion to the Court when the original is filed with the Clerk's Office. This will allow the Court to review the motion and supporting memoranda or affidavits prior to the hearing.

406. DEFAULT JUDGMENTS

A party seeking a default judgment shall first file a written motion and notice to the Defendants for such judgment. All such motions may be heard and scheduled on a Motion Docket. The judgment must also contain a statement by the attorney for the party seeking such a judgment conforming with the certificate required by CR 55.01. Court appearance by attorney representing party seeking default judgment shall be mandatory.

407. JURY TRIALS

A party desiring a jury trial must demand it as provided in CR 38.02. Otherwise, the Court may consider any right thereto waived, and the trial, if any, may be heard by the Court.

408. PRETRIAL CONFERENCES (Jury Trials)

The Court will require the parties to meet in order to discuss and narrow the issues. Parties should be prepared to stipulate facts as to the admissibility of certain documents or other

such evidence, to agree upon the issues to be tried, and to tender proposed instructions.

409. SETTLEMENTS (Jury Trials)

All parties should notify the Court not less than forty-eight (48) hours prior to a trial of a civil case of any settlement therein.

410. SUBPOENAS

All subpoenas to be served by the Sheriff shall be delivered to the Madison County Sheriff's Office at least ten (10) days prior to the trial date. No continuances will be granted due solely to the failure to have a witness subpoenaed unless it is certified that this rule was complied with or other good cause is shown.

411. TRIAL DATE (Jury Trials)

Every effort shall be made by Court and counsel to promote efficiency, to maintain decorum and to avoid inconvenience to the jury panel. All counsel, parties and witnesses shall be present at 8:00 a.m. on the date of trial. Counsel, parties and witnesses for cases which are not anticipated to be heard first shall nevertheless report and remain available for trial throughout the day. Unless otherwise directed by the Court, counsel and parties shall be seated at counsel table at 9:00 a.m. to announce that they are ready for trial.

V. PROBATE PRACTICE

501. PETITIONS FOR PROBATE

To commence the probate of a decedent's estate, a petition for the appointment of a fiduciary, probate of a will, or similar initial pleading shall be filed in the Probate Division of the Clerk's Office, and all required fees paid. The Court prefers that counsel refrain from using

fill-in-the blank forms. Form AOC-830, Dispense with Probate of Estate and Administrative Offices of the Court Fiduciary bond forms are exceptions to this preference.

502. PROOF OF THE EXECUTION OF WILLS

No Will offered for probate will be accepted unless proof is submitted to the Court regarding its due execution. This proof may be in the form of oral testimony before the Court.

503. NOTICE AND WAIVER

Unless the person seeking appointment as a personal representative is named Executor in a Will offered for probate, notice of the hearing on the appointment must be given to all heirs at law. This notice must be in writing. Notice may be by ordinary mail at least five (5) days before the hearing. Proof of service in the form of a copy of the mailed notices and a certificate of service shall be filed in the record with the petition requesting appointment. In lieu of such notice, the Court will accept a notarized waiver from each heir indicating that he or she does not desire to attend the hearing.

504. BOND AND SURETY

The personal representative shall be required to make a bond. The amount of this bond shall be the estimated value of the estate for which the fiduciary is entrusted, but the value of the real estate will be excluded unless the will grants the power of sale or the fiduciary has petitioned the Court to sell the real estate. Surety will be excused where the Will requests that surety not be required or, in the discretion of the Court, where it is deemed unnecessary for the protection of the estate or in instances where a notarized waiver of surety is executed by all parties in interest and filed. Trust companies may pledge their capital stock in the amount of the bond.

505. PETITIONS TO DISPENSE WITH ADMINISTRATION

When there are no probatable assets, or under the appropriate circumstances, the Court

may order that administration of the estate be dispensed with. Such orders may be entered upon a petition requesting such relief filed.

506. PROBATE DOCKET

The Court shall consider probate cases after they have been placed on the Probate Docket as indicated above. Petitions should be filed no later than the preceding day. If a hearing requiring more than fifteen minutes is requested, counsel should contact the District Judge to obtain a day and time for such hearing, and notice shall be given thereafter. Uncontested probate matters and simple matters may be placed on an informal docket and the Court shall enter appropriate orders at the earliest date. Walk-in probate petitions may be considered during probate dockets at the discretion of the presiding judge.

507. SETTLEMENTS

All settlements must comply with statutory requirements and be sufficiently detailed to give the Court enough information to approve them. Informal Settlements may be submitted in accordance with KRS 395.605.

508. COMPENSATION

Any request for compensation made by a personal representative or an attorney for the estate must be clearly itemized in the Final Settlement for approval by the Court.

509. PUBLIC ADMINISTRATORS

Public Administrators will be appointed by the Court on a case-by-case basis as needed. The Clerk shall maintain a list of those local attorneys wishing to serve as Public Administrator. Any local attorney may submit his or her name to the list.

VI. UNLICENSED SCHOOLS, PROGRAMS, TRAINING AND PROBATION

600. INTRODUCTION

The Court recognizes that there are presently a number of private schools, programs, probation services, and training groups which provide services to defendants in conjunction with Court rulings. Such organizations shall be referred to as "organizations" throughout this section. These organizations are privately operated and funded by fees charged to the defendants. Such organizations are not part of the Court system and are not licensed or supervised by any state agency. In order to ensure fair and honest treatment for all people using these organizations, the Court invokes the following rules.

601. IDENTIFICATION

No such organization shall give the impression that it is a part of the Court system or an officer of the Court. In no way shall such organization imply it has any special influence with the Courts.

602. ADDRESS

Each such organization must maintain a telephone and address within this district.

603. FEE SCHEDULE

Each such organization shall provide annually prior to the last day of January a copy of their proposed fee schedule for the next year to the Chief Judge of this District. All fees charged must be approved by the Court. No fees on the proposed fee schedule may be changed without Court approval.

604. INDIGENT FEE SCHEDULE

All such organizations shall present to the Court fee schedules for reduced fees or no fees based on the income of the defendant. Student fees will be based on their particular

circumstances. Under no event shall an organization deny services due to poverty. Indigent fee schedules must be provided annually to the Court no later than the last day of January.

605. REPORT OF REDUCED FEES

All such organizations shall report annually prior to the last day of January the numbers of reduced fee clients serviced in this district during the past year and the amounts charged.

606. FREEDOM OF CHOICE

The Court will not recommend a defendant to a specific program or specific organization unless the defendant moves the Court to do so. Any program and or organization to which a referral is made must be approved by the Court and meet all requirements set out in these rules. Notwithstanding any motion made by the defendant, any recommendation shall be at the discretion of the Court. It is understood that defendants seeking relief offered by such organizations must complete the required course of action by a date set by the Court, barring a motion to extend time or a motion to be released from said course of action, or be subject to the contempt powers of the Court. Any person employing such organization may at any time prior to completion date set by the Court, move the Court to proceed as if they had never entered the program. Under such circumstances, defendants will not owe any fee to the organization. Under no circumstances shall the Court sentence any person to jail time for failing to pay organization fees excluding Court costs and fines. Such fees must be collected by normal Court action regarding civil matters; e.g. Small Claims and Civil Court.

607. MULTIPLE ORGANIZATIONS

The Court shall show no preference to any such organization operating within its district that meets requirements of these rules.

608. EMPLOYEES

No employee of such organization shall be a convicted felon.

609. INCOME AND EXPENSES STATEMENT

Annually on or before the last day of January each such organization shall report to the Chief Judge of this district its total income and expenses originating in this district for the previous year. This report is confidential and not part of the public record.

610. COURT ORDERS

No such organization has any authority to alter or change the Court's terms, conditions or Orders.

611. RESTITUTION

No such organization shall collect restitution or any funds ordered by the Court as terms, conditions or costs as a part of a judgment or Order.

612. INSURANCE

Each organization shall produce and keep current a certificate of liability insurance in the amount of no less than \$1 million dollars as required by SCR 9.020 (D). Proof of such insurance shall be provided to the Court annually prior to the last day of January.

613. DUI SUPERVISION PROHIBITED

Organizations shall not be permitted to supervise or monitor persons found guilty of Driving Under the Influence of Intoxicants unless said organization has been licensed by the Cabinet for Health Services.

614. PENALTY

Any organization that knowingly makes a false report to the Court shall be subject to the Court's contempt powers.

615. LICENSED OR STATE REGULATED PROGRAMS

The above rules do not apply to any licensed programs, probation services, schools or training groups which are supervised by the State Government, County Government, AOC, or Comprehensive Care.

616. COMPLIANCE WITH COURT RULES

To receive referrals, an organization must comply with these rules and SCR 9.000.

VII. MISCELLANEOUS PROVISIONS

701. HOLIDAY SCHEDULE

The Court will observe the AOC holiday schedule and no sessions will be held on those dates designated as state holidays. A yearly list of such holidays will be available in the Clerk's Office upon request.

702. SCHEDULED SESSIONS

It shall be the Court's policy to begin each scheduled session on time. If attorneys or parties desire to confer with the County Attorney prior to Court, they should arrange to arrive at Court in sufficient time to do so without delaying the commencement of Court and without attempting to talk to the County Attorney after Court has convened.

703. INTERVIEW BY PRETRIAL RELEASE OFFICER

The Court shall not, except for good cause, be requested to release any person that has been incarcerated until the Pretrial Release Officer has interviewed that person. After this interview, the Pretrial Release Officer will make appropriate recommendations to the Court.

704. PREPARATION CERTIFICATE

All documents, motions and Orders shall have a certificate stating the preparer's name, address, phone and place for signature. All such documents must be signed by the preparer prior to consideration by the Court. (See, CR 11)

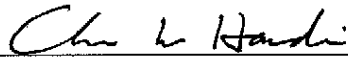
705. FACSIMILES

Facsimiles of criminal, juvenile, emergency mental or domestic violence Orders or a photocopy thereof shall serve for all purposes as an original of said documents. This Order applies only to documents executed by the Court and not to papers filed by counsel of respective parties.

706. CITATION OF RULES

These rules may be cited as "DPR # _____" or District Court Practice and Procedure Rules, 25th Judicial District".

Done this the 20th day of January, 2011.



JUDGE CHARLES W. HARDIN
25th JUDICIAL DISTRICT
DIVISION I



JUDGE BRANDY OLIVER BROWN
25th JUDICIAL DISTRICT
DIVISION II



JUDGE EARL-RAY NEAL
25th JUDICIAL DISTRICT
DIVISION III